

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

AUG 26 2005

OFFICE OF  
MANAGING DIRECTOR

Jennifer L. Richter, Esq.  
Patton Boggs LLP  
2550 M Street, N.W.  
Washington, D.C. 20037

Jennifer L. Kostyu, Esq.  
Morrison & Foerster LLP  
2000 Pennsylvania Ave., N.W.  
Washington, D.C. 20006

RE: Teton Management, Inc. and Teewinot  
Licensing, Inc.  
Request for Refund of Application Fees  
Fee Control Nos. 00000RROG-05-200 and  
0407128130568007

Dear Counsel:

This is in response to your request dated November 24, 2004 and supplemented on April 15, 2005, filed on behalf of Teton Management, Inc. and its wholly-owned subsidiary Teewinot Licensing, Inc. (collectively, Teton) for a refund of the \$4,540.00 filing fees associated with 38 applications to modify Instructional Television Fixed Service (ITFS) and Multipoint Distribution Service (MDS) stations.<sup>1</sup>

You recite that after Teton filed the ITFS and MDS applications and the associated fees, the Commission adopted *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, 19 FCC Rcd 14165 (2004) (*EBS/BRS Order*). You state that in the *EBS/BRS Order*, the Commission instituted geographic licensing for Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (the predecessors to ITFS and MDS) stations and, as a result, determined that it was unnecessary to process pending applications to modify existing

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<sup>1</sup> The Wireless Telecommunications Bureau (Bureau or WTB) dismissed without prejudice your initial request for a refund of the ITFS and MDS filing fees associated with 23 of the applications. See Notice of Immediate Dismissal from WTB, FCC, to Morrison & Foerster LLP, Reference No. 0001914376 (dated Oct. 28, 2004). You state that you did not file a similar request for refund with the Bureau with respect to the remaining 15 applications.

ITFS and MDS stations and ordered the Bureau to dismiss them.<sup>2</sup> In accordance with the Commission's directive in the *EBS/BRS Order*, the Bureau dismissed without prejudice Teton's 38 ITFS and MDS applications.<sup>3</sup> You assert that because the Bureau dismissed Teton's applications pursuant to the *EBS/BRS Order*, Teton is entitled to a refund of the filing fees associated with the 38 applications under section 1.1113(a) of the Commission's rules, 47 C.F.R. §1.1113(a)(4).

Section 1.1113(a)(4) of the rules provides that "[t]he full amount of any fee submitted will be returned or refunded . . . [w]hen the Commission adopts new rules that nullify applications already accepted for filing, or new law or treaty would render useless a grant or other positive disposition of the application." In the *EBS/BRS Order*, the Commission directed the Bureau to dismiss certain pending applications to modify ITFS and MDS stations because those applications were no longer necessary, and thus it would not serve the public interest to process them. The Bureau subsequently dismissed Teton's applications pursuant to that Commission directive. Under these circumstances, we agree that the Commission in effect "nullified" Teton's pending modification applications when it subsequently instituted geographic licensing for the services in question and ordered dismissal of the pending applications, and that a refund of the filing fees associated with Teton's applications is therefore appropriate under section 1.1113(a)(4) of the rules. Accordingly, we grant your request for a refund of the filing fees associated with Teton's 38 applications to modify ITFS and MDS stations.

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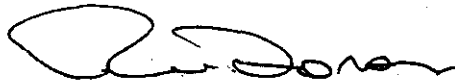
<sup>2</sup> You cite the *EBS/BRS Order* at para. 58:

In light of our decision to institute geographic area licensing for BRS and EBS, we direct the Wireless Telecommunications Bureau to dismiss all pending applications to modify MDS or ITFS stations, except for modification applications that could change an applicant's PSA, or applications for facilities that would have to be separately applied for under the rules we adopt today. In light of the fact that we are initiating geographic area licensing immediately, we see no public interest in processing modification applications that are no longer necessary.

<sup>3</sup> Citing a September 22, 2004 Notice of Dismissal, you state that it is substantially identical to 37 other letters that Teton received from the Commission dismissing Teton's ITFS and MDS applications. See Notice of Dismissal from the FCC to Teewinot Licensing Inc., Reference No. 3048162, File No. 19990629AAD, Radio Svc. VX, Market Area BTA202 (dated Sept. 22, 2004) (Bureau dismisses Teton's application after determining that it "falls within the class of applications that the Commission ordered dismissed" in paragraph 58 of the *EBS/BRS Order*).

A check, made payable to the maker of the original check, and drawn in the amount of \$4,540.00 will be sent to you at the earliest practicable time. If you have any questions concerning the refund, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Reger', with a stylized, flowing script.

Mark A. Reger  
Chief Financial Officer

Enclosures

Counsel to Teton Management, Inc.

Jennifer L. Richter

*[Handwritten signature]*

Respectfully submitted,

contact the undersigned. Thank you.

Please date-stamp the enclosed copy of this submission and return it to my attention in the self-addressed envelope. Should any questions arise regarding this filing, please

On behalf of Teton Management, Inc. ("Teton"), please find enclosed an original and four copies of a Supplement ("Supplement") to Teton's November 24, 2004 Petition for Reconsideration ("Petition") filed in the above-referenced case. The Petition seeks reconsideration of the Wireless Telecommunications Bureau's October 28, 2004 dismissal of Teton's request to refund filing fees associated with 23 dismissed applications. The part of an ongoing rulemaking to reform the Educational Broadband Service and the Broadband Radio Service. The Supplement adds to Teton's refund request 15 additional applications that were dismissed since the Petition was filed. Also, pursuant to staff request, the Supplement includes proof that all relevant filing fees were paid.

Dear Ms. Dorch:

Re: Supplement to Petition for Reconsideration  
 ULS Reference No. 0001914376

ATTN: Joe Putnam, Office of the Managing Director

Washington, D.C. 20554  
 445 12th Street, S.W.  
 Federal Communications Commission

Secretary  
 Marlene H. Dorch

Via Hand Delivery

April 15, 2005

Writer's Direct Contact  
 202/887-6931  
 jrichter@mofo.com

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Federal Communications Commission  
 Office of Secretary

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*[Handwritten signature]*  
 Emails Attached